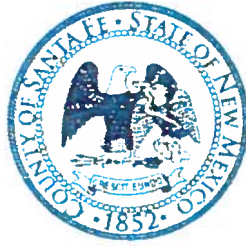


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: April 9, 2013

TO: Board of County Commissioners

FROM: Miguel "Mike" Romero, Development Review Specialist Sr. *(MR)*

VIA: Penny Ellis-Green, Land Use Administrator *PEG*
Vicki Lucero, Building and Development Services Manager *VL*
Wayne Dalton, Building and Development Services Supervisor *WD*

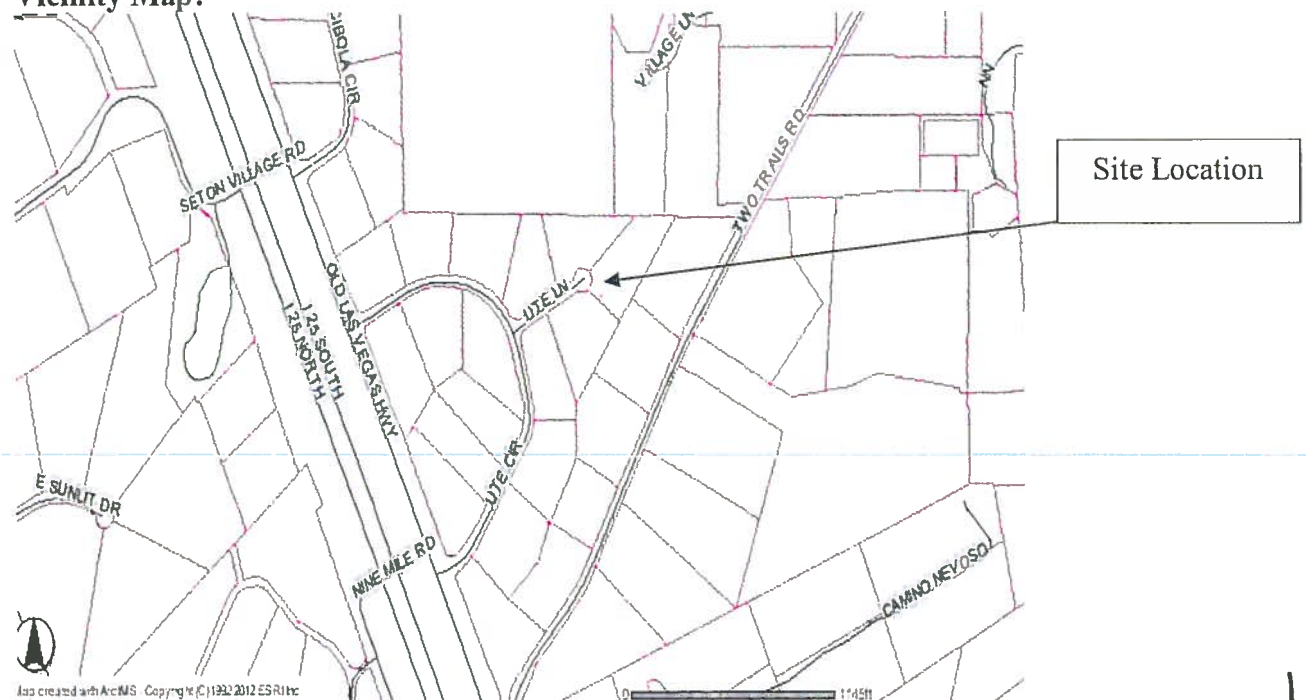
FILE REF.: CDRC CASE # V 12-5430 Susan Sutton Variance

ISSUE:

Susan Sutton, Applicant, Requests A Variance Of Article III, Section 10 (Lot Size Requirements) Of The Land Development Code To allow Two Dwelling Units on 2.492 Acres.

The Property Is Located At 8 Ute Lane, Within Section 20, Township 16 North, Range 10 East (Commission District 4).

Vicinity Map:



SUMMARY:

The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 2.492 acres. The property is located in the Metro Mountain Hydrologic Zone where the maximum density is one dwelling unit per 5 acres with community water. The subject lot was created in 1974, and is recognized as a legal non-conforming lot.

There are currently two dwelling units on the subject property. The structures consist of a main residence, a studio containing a kitchen and bathroom, and an accessory structure (metal shed). There are no records of the main residence or studio being permitted by Santa Fe County.

On October 19, 2012, Santa Fe County Building and Development Services Department received a written complaint regarding the Applicant's studio. On October 25, 2012, the Applicant received a Notice of Violation from Santa Fe County Code Enforcement for Exceeding Density requirements.

The Applicant states that when she bought the property at 8 Ute Lane in 2007 the house was listed below the appraisal value and the property was advertised as is, having a main house and a heated studio with a kitchen and bathroom. According to the Applicant's knowledge the house was built in the early 1970's and the original owners lived there from 1974 to 1988. The property has since been sold 5 times since the original owners sold the property in 1988. The Applicant has obtained information that the studio was built in 1991 by the second owner of 8 Ute Lane. The Applicant has stated she has spent thousands of dollars on repairs to bring the main residence and the studio up to code. At this time the Applicant has a roommate who is ill that lives in the main residence, which she is helping care for. The Applicant has rented the studio to a nurse who provides medical assistance to the roommate. The Applicant feels she should not be held accountable for the structure (studio) that has been on the property for years and to her knowledge has never been challenged as being an illegal structure.

Article II, § 3 (Variances) of the County Code states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified." **The variance criteria does not consider financial or medical reasons as extraordinary hardships**

This Application was submitted on December 4, 2012.

On January 17, 2013, the CDRC met and acted on this case, the decision of the CDRC was for Approval 5-1. (CDRC Minutes Attached as Exhibit 1).

Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request.

APPROVAL SOUGHT: Approval of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

HYDROLOGIC ZONE: Metro Mountain Zone, minimum lot size per Code is 80 acres per dwelling unit. Lot size may be further reduced to 20 acres with water restrictions. Lot size may be further reduced to 5 acres where Community Water service is available. The two proposed dwelling units exceed the number of units allowed on the subject property.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Sunlit Hills

LIQUID WASTE: Advanced Treatment System

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency</u> County Fire	<u>Recommendation</u> Approved With Conditions
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STAFF RECOMMENDATION: Denial of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code.

If the decision of the BCC is to Approve the Applicant's request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for all structures on the property (As per Article II, § 2). 3

3. The placement of additional dwelling units or Division of land is prohibited on the property (**As Per Article III, Section 10**).
4. The Applicant shall comply with all Fire Prevention Division requirements (**As per 1997 Fire Code and 1997 Life Safety Code**).

EXHIBITS:

1. January 17, 2013, CDRC Meeting Minutes
2. Letter of request
3. Article III, §10 (Lot Size Requirements)
4. Article II, § 3 (Variances)
5. Site Photographs
6. Site Plan
7. Aerial of Site and Surrounding Area
8. Fire Prevention Division Memo
9. Letters of Support

County Hydrologist Karen Torres stated she read the March 7, 2012 letter from the OSE. Member Drobnis said he believed there was a more recent letter. Ms. Torres indicated she does not have a copy of a later letter but has seen the permit of Well #18 for 200 acre-feet. This well, which is across from the Agora is for the entire water system. The point of diversion is that well.

Duly sworn, Robert Rambo said he attended but did not facilitate the January meeting. He has been mediating the case, resulting in a settlement agreement regarding the affordable housing. Mr. Miller has agreed to bury the propane tanks and exclude mobile homes.

Citing the favorable response from the State Engineer, Member Katz moved to approve the request with the conditions plus the fourth conditions. Member Valdez seconded and the motion carried unanimously [6-0]. [Subsequently, Member Martin changed her vote to a nay vote, resulting in a 5-1 vote. See page 15.]

There was disagreement from audience members regarding the representations made. Chair Gonzales said the case will go in front of the BCC, probably in March

VII. NEW BUSINESS

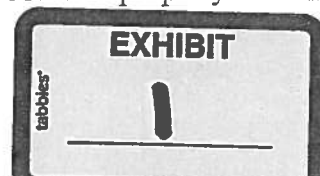
A. CDRC Case #V 12-5430 Susan Sutton Variance. Susan Sutton, Applicant, Requests a Variance Of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow Two Dwelling Units on 2.492 Acres. The Property is Located At 8 Ute Lane, Within Section 20, Township 16 North, Range 10 East, Commission District 4

Mike Romero gave the staff report as follows:

"The subject lot was created in 1974, and is recognized as a legal non-conforming lot. There are currently two dwelling units on the subject property. The structures consist of a main residence, a studio containing a kitchen and bathroom, and a shed. There are no records of the main residence or the studio being permitted by Santa Fe County.

"On October 19, 2012, Santa Fe County Building and Development Services Department received a written complaint regarding the Applicant's studio. On October 25, 2012, the Applicant received a Notice of Violation from Santa Fe County Code Enforcement for Exceeding Density requirements.

"The Applicant states that when she bought the property at 8 Ute Lane in 2007 the house was listed below the appraisal value and the property was advertised as is, having a main house and a heated studio with a kitchen and bathroom. According to the Applicant's knowledge the house was built in the early 1970's and the original owners lived there from 1974 to 1988. The property has since been sold



five times since the original owners sold the property in 1988. The Applicant has obtained information that the studio was built in 1991 by the second owner of 8 Ute Lane.

“The Applicant has stated she has spent thousands of dollars on repairs to bring the main residence and the studio up to code. At this time the Applicant has a roommate who is ill that lives in the main residence, which she is helping care for. The Applicant has rented the studio to a nurse who provides medical assistance to the roommate. The Applicant feels she should not be held accountable for the structure – studio, that has been on the property for years and to her knowledge has never been challenged as being an illegal structure.”

Mr. Romero stated staff is recommending denial of a variance from Article III, §10, Lot Size Requirements, of the Land Development Code. If the decision of the CDRC is to recommend approval of the Applicant’s request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk’s Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for all structures on the property (As per Article II, § 2).
3. The placement of additional dwelling units or Division of land is prohibited on the property (As Per Article III, Section 10).
4. The Applicant shall comply with all Fire Prevention Division requirements (As per 1997 Fire Code and 1997 Life Safety Code).

In response to a question by Member Martin, Mr. Romero said C.S. Schatz submitted the complaint.

Member Drobnis asked about documentation regarding when the buildings were constructed. Mr. Romero said they have been unable to find proof that either structure was permitted. He said he was informed by the applicant that the main residence was built in the early seventies.

Chair Gonzales remarked that normally utility companies require County approval and inspection before hooking up services. Mr. Romero said they are usually hooked up when they are first built but in this case there is no record of utility hookup. The lot was created in 1974, before creation of the code.

Duly sworn, Susan Sutton gave a history of the property as she understood it, and pointed out she now has a permanent restraining order against Ms. Schatz, the woman who filed the complaint due to numerous problems. She has letters of support from all of

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her neighbors. She has aerial photos that show the studio was built between 1988 and 1992.

Ms. Sutton said she wants the variance because she can't turn back 20 years. She has improved the property at great expense. Contrary to the complaint, she did not build the studio. It does not interfere with the neighborhood or environment. She has met with the Fire Department in order to comply with requirements.

Member Drobnis asked about the areas blanked out in the letter of intent. Mr. Romero said that was private medical information.

Ms. Sutton said there are four letters of support. The property has one septic system that was serviced this spring.

There was no one from the public wishing to speak.

Member Drobnis asked the applicant if the person in the studio could live there without the kitchen. Ms. Sutton said she could not.

Member Valdez moved to approve the variance request with staff conditions. Member Anaya seconded.

Member Katz pointed out this was not a self-imposed condition.

The motion passed by 5-1 voice vote with Member Drobnis casting the nay vote.

VII. B. CDRC Case #MIS 12-5440 Perla Rascon. Perla Rascon, Applicant, requests the recognition of a 0.95-acre parcel as a legal lot of record. The property is located at 65B Loma Vista Road, in the vicinity of La Puebla, within Section 4, Township 20 North, Range 9 East, Commission District 1

Wayne Dalton gave the following staff report:

"The Applicant requests the recognition of a 0.95-acre parcel as a legal lot of record. The property is currently vacant.

"An aerial photograph taken in 1992 shows an existing residence and two sheds on the property. An aerial taken in 2005, shows the same three structures that are located on the subject property. There is a permit associated with the address of 65B Loma Vista under permit, #96-1674, for an addition to a mobile home. However, after conducting an inspection of the property, staff has found the property to be vacant.

"Taxes have been paid on the 0.95-acre portion of property since 1986 and the Applicant has submitted deeds dating back to 1984. It appears the 0.95-acre lot

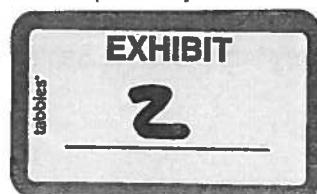
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Letter of Intent for Request of Variance at 8 Ute Lane, Santa Fe, NM 87505

The House at Ute Lane was registered with Santa Fe County on January 22, 1974. The home located at 8 Ute Lane was first purchased by me and Donald Davis, my former husband, in August 2007. This house was purchased at a rate below the appraisal value, because the owners needed to move quickly and because the internal state of the residence, including the heated studio in question, needed tens of thousands of dollars of repairs and updates to be a comfortable and functional home. The floors were mostly uncovered and painted with faded black paint. In the back two rooms, the carpets appeared to be the original carpet and were worn and filthy. The kitchen counter was split and falling off and the bathroom vanities were original and the shower tile falling off the walls. The heated studio was being used more like storage area by the people moving out, as it was filled with boxes at the time we made an offer on the house. The plan was to do a lot of the work ourselves to make repairs and replace the worn counters, floors, appliances, etc. In the Fall of 2007, I completed a \$35,000 (my money) project to bring the main house up to its current condition, for the most part. As our short marriage did not last, and Don and I were divorced at the end of 2008, the studio was not addressed until I was able to buy him out of the house, as the majority of the down payment into the house was from my money (\$325,000 from me and \$60,000 from Don; his second mortgage), as we had a prenuptial agreement from Florida which was amended by a New Mexico attorney before we left the State. In Spring of 2012, I was able to refinance the home, paying off Don's second mortgage, the first mortgage and paying him additional money to allow me to refinance alone; he signed a quit claim deed.

The reported history of the home: I have learned from speaking to my neighbors who live on either side of my property and which have lived in their homes for several decades, that I am the sixth owner. The first owner lived here from 1974 until around 1988, the second from around 1988 until around 1995, the last owners, which from whom we purchased the house lived here less than two years, and there were two other owners between around 1995 and 2006; one who lived there around 2 years and the other around 7 or 8 years. (My former husband and I were the sixth owner of the property/home, since which time I have become the sole owner.) The property is approximately 2.5 acres and is the last property at the end of the Ute Circle and Ute Lane area. Since the time a person wrongfully and vindictively reported that I built a Studio on the property since the house was purchased (actually I believe she reported it was built this year). I have learned until my former husband and I purchased the property a septic permit had never been pulled. It was issued for the first time in 2007 for the existing septic due to the request of the Title Company. In conversations with the Environmental Department, I learned a majority of the houses built in Hondo Hills during that period did not have original septic permits pulled. This was a very rural area in those days; although all these streets are Santa Fe County roads. I first moved to New Mexico in 1981 and even at that time, enforcement of nearly everything was very loose. Things have changed a great deal in the past 10 to 20 years.

As the original area, Hondo Hills, must have had permitting for the houses, I do believe the studio in question was added sometime after the original house was built; how long after is unknown. There is also an addition built on the main house, which must have been added without permit decades ago, as according to County records, very few permits have been pulled. The exact age of the studio is unknown, but it was probably built somewhere in the late seventies to around the beginning of the nineties.



In 2009, I let a friend needing a place to stay use the studio for about 3 months. He is now married and lives in Los Lunas, the last I heard. In 2010, as I was living alone and working as the Mental Health Manager at the Penitentiary of NM, I unplugged the refrigerator and kept the heat at a minimal temperature to avoid pipes from freezing, but the studio was not being used for anything.

In the late Winter of 2011, I had a pipe freeze issue, when the temperature went to minus 18 degrees, which led to a \$45,000 repair and insurance claim, including a new heating system on the roof. There was also a pipe freeze in the garage in the line leading to the connection on the house where the water line leads to the studio. A small portion of the large house repair included replacing and insulating the pipe and re-insulating the connection. The studio had no freeze damage. The repair took the entire summer.

In the same year, 2011, [REDACTED]

[REDACTED] He needed advanced surgery, and I went with him to the Mayo Clinic in Phoenix in October 2011, and was on his "Medical Directive". Early in 2012, still going through the divorce, my friend learned he and his, then, wife, were going to lose their house (she had not been living there since August 2011). [REDACTED]

[REDACTED]

It was during this period Spring 2012 that due to the very low interest rates and the continued poor housing market, my former husband accepted an offer and the house was refinanced solely by me. The primary purpose of restoring the studio had become about the described life situations of me and my friend, now my room-mate. My friend/roommate is considered "terminal", but is in treatment and is still able to run his local business. Between me, my friend and a contractor from Rio Rancho, we did the repairs and replacements (with the exception of the gas heater and stove). In April, when my friend lost his house, I let him move into my guest room, as a room-mate. The plan was to restore the Studio and then get a nurse or nursing student to live there, due to our medical situations and age. [REDACTED]

[REDACTED] I guess it is part of my calling. So, Steve moved in.

Why did someone report I had built a second dwelling at 8 Ute Lane? Without going into great detail, there is a woman in Santa Fe who I had known for a little less than a year, and someone which I thought was well intentioned and becoming my friend, decided to report this "false" information. She had dropped a package at my house once, but had never been invited to my house. I paid her at her business to do pedicures for me. I was almost finished with the studio, and I had an appointment with her. She told me her 3 month house sitting job was almost over. I told her that I had restored the Studio on my property and she could stay there free, until I could find a student nurse or nurse, and would understand our situation. [REDACTED]

[REDACTED] I asked her to move out after she became obsessive about many things and became very demanding and inappropriate. She has made my life very difficult and the last act that she has done was to falsify information to Santa Fe County that I had erected

a structure in addition to the main house at Ute Lane; this is a blatant lie, designed to get vengeance for thoughts she has about her entitlement to control mine and others lives. She threatened to call my Supervisor at the Penitentiary and my Therapist; I didn't really understand what she would say, but threats. She threatened me in public at the grocery store. A week after my surgery, while still out of work, I was served with a civil summons, that she was suing me. She had made threats my email and voicemail, which I have in my possession. As the judge has made no judgment on her ridiculous claim, that I owe her money for asking her to leave my property, and her suit was filed almost 3 months ago, about six weeks ago she filed this false accusation that I had built a structure on my property. I have since filed a restraining or against her and it will be heard in court on 12-14-12. When Inspector Mr. Lovato came to my home and left me a violation notice, I learned the studio on the property had never been permitted by Santa Fe County. I had always believed everything about my home had been built and registered appropriate and legally, and the studio built decades ago was somehow currently a violation of Code. Soon thereafter, I was advised by a friend, who is a local architect that I would have to request a variance for the Studio as it currently stands, and request it be grandfathered in, probably as a guest house.

Requesting a Variance for the Studio on my property at 8 Ute Lane:

As my former husband and I were the 6th owners of this 39 year old home, and now I am the single owner of this property; this house was sold to us as is. Only repairs and replacement work have been done at the property, to include the studio. Part of the reason we purchased it was the potential both the main house and the studio had, but there would be a great deal of work required to make the house truly livable. I felt we could safely assume the home we were purchasing would have had all proper permitting done years before. As the 6th owner, over 39 years, this would mean that the house has been sold 5 times, plus the refinance to me as sole owner, 6 times over the 39 years without in discrepancies surrounding the studio on the property being other than part of 8 Ute Lane. Although the area is still rural, it was very rural when these homes were built and the area was developed in the 70's. The requirements and standards have changed more than once since this time.

Since the time, I spoke to Mike Romero about the process of requesting a variance; I have learned many things about the area. One thing is the majority of the houses in Hondo Hills, built in that period of time, did not have septic permits pulled. From looking at Google Earth many of these homes have additional structures on the property. I have learned that, although there are many additions in my own neighborhood, very few permits have been pulled, and that extends into the Sunlit Hills water area in general. My guess is of these homes in this area, which was so rural in the 70's and into the 90's, there are 1000's of permits that have not been pulled for septic, remodels and construction of additional structures on the properties.

The Studio on my property is the last structure at the end of road up a 480 foot driveway. It is apparent that the studio was built between where trees stood, as it is surrounded by trees, although there is an agreement in the old homeowners association (debunked) that specifically stated the reasons trees could be removed. I believe the auto-court area was made larger when the studio was built, although, I have no way to prove this. In looking at the other homes in the area, mine by far has the largest parking area.

I am well within the limits in regards to water usage. Both structures have separate propane tanks. PNM must have run the electric lines underground to the studio many years ago, as there is

a separate breaker box in the studio. In May I had the septic tank pumped and located, for the first time since I lived there; almost 5 years at the time. There was never a problem with the tank during those years. I was told I should have it pumped every 3 years.

No one in my neighborhood has ever opposed the structure on the property, and some I have talked to remember it always being there. There is a big arroyo on the edge of my property and the house and studio can be seen from there. People hike up it. Otherwise my house cannot be seen by any other home, and I cannot see any of my neighbors from the property.

So for the following reasons I request the variance:

1. Being the 6th owner and the 5th person who has purchased the home since sold by the originally owners about 25 years ago, I should not be held accountable for what some others did, knowingly or unknowingly, nor the Title Companies or Realtors ever challenged.
2. That the structure has been on the property for decades and no one who had an interest in the neighborhood has ever made a complaint, as it obstructs nothing.
3. The utilities have never been excessive since I have lived there, nor since I have acquired two room-mates; 3 people live on the property.
4. There are no issues with the septic, and it is permitted; the leach field is very large.
5. There are 1000's of structures, septic tanks and additional construction that had taken place in Hondo Hills in the past 40 years that remain and do no harm, but have never been permitted officially (my septic tank is an example).
6. I am certain the studio is up to code; I made sure this was checked by a professional when I started the project making repairs and replacements and making it a nice place to hang. The building needed repairs and updating; it would have been a shame for it to deteriorate from continued lack of care.

For these reasons and for all that I have added to this report; I request that this 491 square foot studio be given a Variance to be known as a "Guest House" on the property, as it has a small bathroom and kitchenette on one short wall, which according to Mike Romero makes it a "guest house" by definition, not a studio.

Respectfully,

Susan C. Sutton
12-4-2012

TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft.
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft. of garage space.
Industrial	1 per employee plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq. ft. of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas, spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

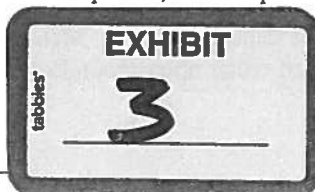
- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
- 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.
- 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

History. 1980 Comp. 1980-6. Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

SECTION 10 - LOT SIZE REQUIREMENTS

10.1 Relationship of Lot Sizes to Water Policies

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.



10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Year) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure of the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units; devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report: See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres

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For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2, or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if U = 0.25 acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control.

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10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

<u>BASIN ZONE:</u>	1 acre
<u>BASIN FRINGE ZONE:</u>	2.5 acres
<u>MOUNTAIN ZONE:</u>	5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:
14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:
1 acre - Where community water or community liquid waste disposal systems are utilized.
.50 acre - Where community water and community sewer systems are utilized.

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.

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2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

SECTION 3 - VARIANCES3.1 Proposed Development

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking or property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

3.2 Variation or Modification

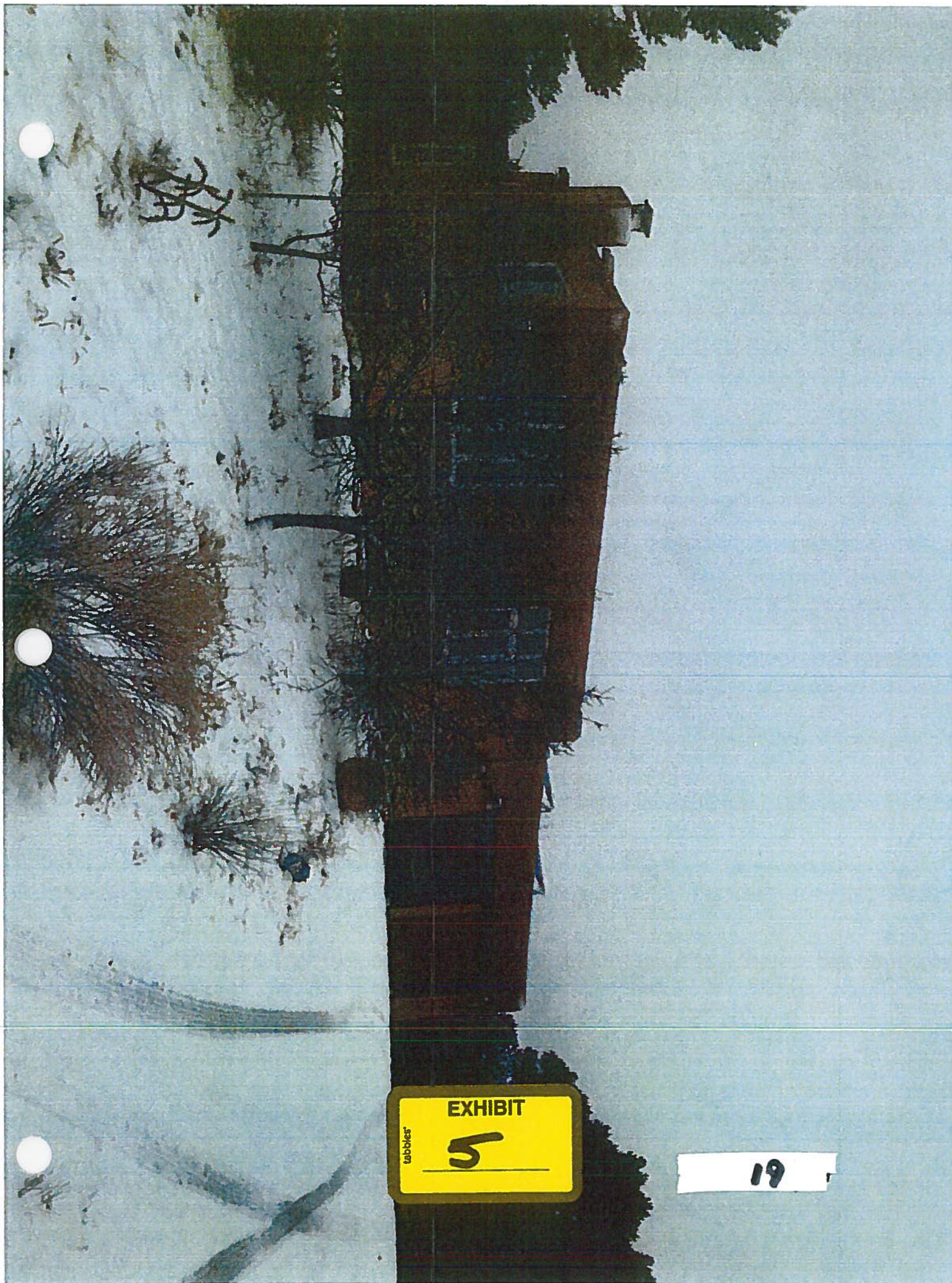
In no case shall any variation or modification be more than a minimum easing of the requirements.

3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the



EXHIBIT

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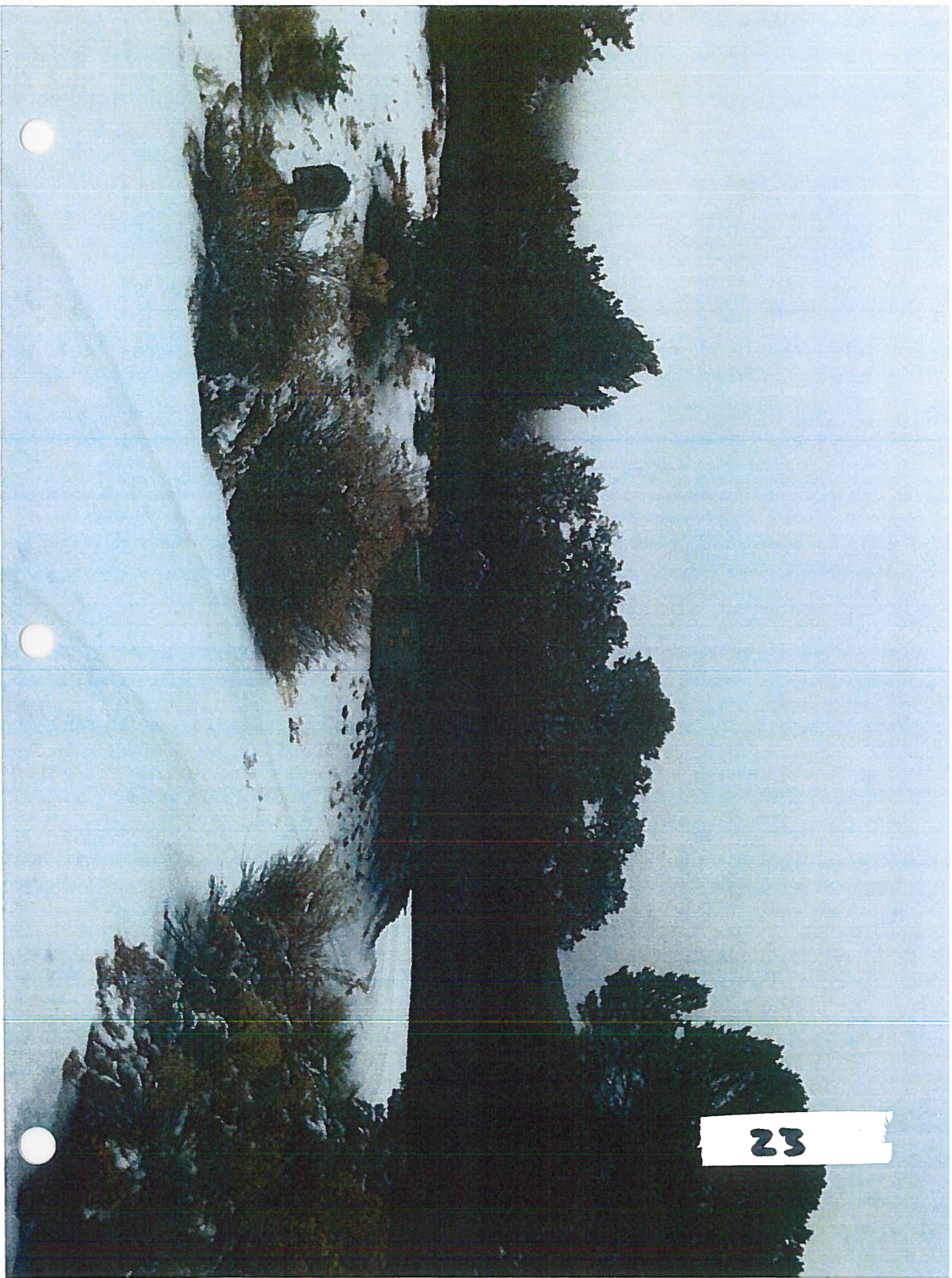
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